

**IN THE HIGH COURT OF UTTARANCHAL AT
NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 1190 of 2003 (S/S)

Jasbir Singh Virk Petitioner

Versus

State of Uttaranchal,
Through Secretary (Secondary Education),
Dehradun, Uttaranchal & others..... Respondents.

Date of decision: 31 August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent
to the reporters for reporting? (yes)
- Whether the reporters be allowed to see the
judgment? (yes)

RESERVED JUDGMENT

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State of Uttaranchal,
Through Secretary (Secondary Education),
Dehradun, Uttaranchal & others..... Respondents

Mr. S.S. Chauhan, learned counsel for the petitioner.
Mr. J.P. Joshi, learned Addl. Chief Standing counsel for the State.
Mr. B.D. Upadhyaya, learned counsel for respondent No. 5.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari for quashing the impugned order dated 09.09.2003 by which the Regional Joint Director of Education, Garhwal Division, Pauri Garhwal has ordered to place the petitioner junior to respondent No. 5 in the seniority list of the Lecturers.

2) Brief facts, as alleged in the writ petition are that Sri Guru Nanak Public Boys Inter College is a non Government recognized and aided Institution of the State Government. The said Institution is run and managed by the Sikh minority community as such the same has character of minority Institution. The petitioner was initially appointed on the post of Lecturer in Punjabi in the aforesaid College on 15.11.1976 on probation, and his appointment was approved by the Deputy Inspector of Schools, Dehradun vide letter No. 2891/76-77 dated 10.01.1977 (copy Annexure- 2 to the writ petition). It is alleged

in the petition that on completion of one year of satisfactory service by the petitioner, he stood confirmed in accordance with the Regulations framed under U.P. Intermediate Education Act, 1921. The minimum qualification for the appointment of Lecturer in Punjabi in a recognized Institution as per the said Act of 1921, is M.A. in Punjabi which the petitioner possessed at the time of his initial appointment. The petitioner worked diligently to the utmost satisfaction of his superiors since his initial appointment. The Administration / Prabandh Sanchalak of Sri Guru Nanak Public Boys Inter College, Dehradun issued a tentative seniority list of Lecturers on 03.04.2002 (copy Annexure- 3 to the writ petition) in which the petitioner's name was shown at serial number 3 and Sri Dinesh Kumar Sharma, respondent No. 5, was shown at serial number 4 but a final seniority list in pursuance of above tentative seniority list was held up due to which the petitioner filed writ petition No. 30 (S/B) of 2003 which was disposed of finally by this Court with the direction to the respondent No. 4 to dispose of the representation of the petitioner and publish the final seniority list within a period of four weeks. Consequently, the respondent No. 4 after hearing the respondent No. 5 published the seniority list on 23.04.2003 (copy Annexure- 5 to the writ petition) and in the final seniority list the petitioner stood at serial number 2 while the respondent No. 5 stood at serial number 3 below the petitioner. Against the said final list, on application of Sri Dinesh Kumar Sharma, respondent No. 5, the Regional Joint Director of Education (respondent No. 2) invited the objections from the petitioner vide letter dated 06.05.2003. The petitioner, in response to the notice, made his submissions before the authority concerned. However, the respondent No. 2 without considering the case of the petitioner and ignoring Regulation 3 of Chapter II and Appendix- A to U.P. Intermediate Education Act, 1921, passed the impugned order dated 09.09.2003 whereby

the petitioner was placed below Sri Dinesh Kumar Sharma, (respondent No. 5). Aggrieved by which this writ petition has been filed.

3) The respondent No. 5 filed his counter affidavit and denied most of the contents of the writ petition. According to the respondent No. 5, as stated in his counter affidavit, the appointment letter was issued to the petitioner on 11.01.1977 which the petitioner has himself filed as Annexure No. 1-A to the writ petition. The answering respondent has denied if the petitioner stood confirmed on completion of one year of probation as Regulation 9 of Chapter III framed under the U.P. Intermediate Education Act, 1921 provides that no Teacher or Head of Institution will be confirmed until he has passed the High School examination of the Board with compulsory Hindi as one of his subjects. It is further stated in the counter affidavit that Regulation 10 provides that a person placed on probation shall be confirmed if he fulfills requirements of Regulation 9 of the above Act of 1921. The petitioner being fully aware of said legal problem passed High School examination with Hindi as a subject in the year 1979, during the period of his service. As such, final seniority list as finalised by respondent No. 2 through impugned order is correct, for the reason according to respondent No. 5, the petitioner's seniority will be counted only after he passed subject of Hindi in High School examination.

4) I heard learned counsel for the parties at length and perused the affidavits filed by the parties along with annexures annexed thereto apart from going through the case laws referred by them.

5) The short question for consideration before this Court is whether the petitioner has been wrongly denied his due seniority as Lecturer by the respondent No. 2, and whether his seniority

can be counter only after he cleared the subject of Hindi through High School examination during the period of service as required under Regulation 9 of the Chapter III framed under the U.P. Intermediate Education Act, 1921?

6) Before further discussions for deciding the controversy, it is pertinent to mention the relevant provisions of law. Regulation 1 of Chapter II framed under the U.P. Intermediate Education Act, 1921, reads as under:

“1. The minimum qualifications for appointment as Head of Institution and Teachers in any recognized Institution, whether by direct recruitment of otherwise, shall be as given in Appendix A.”

Entry at Serial number 15 of Appendix A of the above Act reads as under:

S.No.	Name of the post	Educational Training experience	Age	Desired Qualification
15	Punjabi teacher for Intermediate (Classes 11-12)	M.A. in Punjabi	-	Trained
	For High School (Classes 9-10)	(1) B.A. with Punjabi or (2) Gyani degree in PUnjabi of Punjab University with Intermediate	-	Trained

7) As such the minimum qualification for appointment of teacher for Intermediate was as above which the petitioner fulfilled at the time of his initial appointment as alleged in the writ petition. This fact is not denied by the respondents if the petitioner was not M.A. in Punjabi and if his appointment was not approved by the Deputy Inspector of Schools on 10.01.1977.

Seniority of the petitioner was challenged by the respondent No. 5 on the ground that he had not cleared by then subject of Hindi in the High School which was the requirement as provided in Regulation 9 of Chapter III framed under the U.P. Intermediate Education Act, 1921. Accepting this ground, the respondent No. 2 has passed the impugned order placing the petitioner below the respondent No. 5. The Regulation 9 of Chapter III framed under aforesaid Act reads as under:

“9. No teacher or head of Institution will be confirmed in his appointment until he has passed the High School Examination with compulsory Hindi as one of his subjects, or an equivalent Examination with Hindi (Regular not Elementary) of an examination body situated within a state where Hindi is the Regional language, or any one of the following examinations:

- (a) The Adhikari of the Shiromani Examination conducted by the Gurukul University, Vindroban.*
- (b) The Vidyadhikari or the Alankar Examination conducted by the Gurukul Univeristy, Kangri (Haridwar).*
- (c) The Purva Madhyama Examination conducted by the Government Sanskrit College, Varanasi of Varansey Sanskrit Vishwavidalya Varanasi.*
- (d) The Visharad Examination with Hindi Literature of the Sahitya Ratna Examination with Hindi Literature conducted by the Hindi Sahitya Sammelan, Allahabad.*
- (e) The Kovid of the Advanced Language (with Hindi) Examination conducted by the Department of Education, Uttar Pradesh.*

(f) *The Prabhakar Examination of the Punjab University, Punjab.*

(g) *The Indian School Certificate Examination. The Combridge School Certificate Examination with Hindi (as a first Language).*

(h) *The erstwhile Departmental Special Vernacular Examination in Hindi conducted by the Department of Education, Uttar Pradesh;*

provided that the Board may after considering the report of the Director grant exemption for sufficient reasons in exceptional circumstances.”

9) Regulation 10 of Chapter III of the same REgulations provides further as under:

“10. A person placed on probation shall be confirmed if he fulfills the requirements of Regulation 9 above, has worked with diligence, has otherwise provided himself fit for the post for which he was recruited and his integrity is certified.”

10) It is settled principle of law that the seniority of a teacher is counted from the date of his substantive appointment. But learned counsel for respondent No. 5 placing reliance on the principles of law laid down in *Shitla Prasad Shukla V. State of U.P.* and others reported in 1984 UPLBEC Pg 461 argued that seniority of the petitioner can be counter from the date he cleared High School or from the date he was granted exemption for the same. In reply to his, learned counsel for the petitioner referred to the case of *Direct Recruits Class II Engineering Officers’ Association V. State of Maharashtra* and others reported in (1990) 2 Supreme Court Cases 715, and submitted that the date of confirmation is not relevant for the purposes of the seniority. In view of the said case law, which is subsequent to the one referred on behalf of respondent No. 5, I am of the

opinion that for the purposes of seniority date of confirmation has little relevance. Had it been the case that the petitioner had not passed the Hindi subject and was still not confirmed, I would have preferred to follow the view taken in Shitla Prasad Shukla (supra) but here the petitioner had fulfilled the condition of clearing the subject of Hindi of High school standard and he cannot now be denied his seniority from his substantive appointment i.e. the initial appointment which is certainly prior to that of the respondent No. 5 who was appointed on 07.09.1978 as Lecturer of Commerce. In Baleshwar Dass V. State of U.P. reported in A.I.R. 1981 S.C. Pg 41 it has already been held that merely because a person has a temporary appointment it cannot be said that he is not substantively appointed.

11) In view of the above discussions, this Court is of the opinion that the seniority list as contained in Annexure- 5 to the writ petition showing the petitioner's name at serial number 2 and that of respondent No. 5 at serial number 3 is upheld and the impugned order dated 09.09.2003 of the Regional Joint Director of Education, Garhwal Division, Pauri Garhwal is liable to be quashed. Accordingly the writ petition allowed and the impugned order dated 09.09.2003 is quashed. No order as to costs.

(P.C. Pant, J.)

Dt. 31st August 2004.
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